

FILED

September 22, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL M I N E R S**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION : Administrative Action
OR REVOCATION OF THE LICENSE OF :

MICHAEL ASHKAR, M.D. : SECOND ORDER OF DENIAL OF
: REINSTATEMENT OF LICENSE

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was most recently reopened to the New Jersey State Board of Medical Examiners ("the Board") upon the August 20, 2003 filing by Dr. Ashkar of a second Application for the Reinstatement of his Medical License.

This matter was previously opened to the Board upon the filing by Dr. Ashkar of an application for the reinstatement of his license to practice medicine and surgery in the State of New Jersey which the Board denied at its May 14th meeting. At this juncture we reaffirm our prior denial of reinstatement.

Respondent's medical license had been temporarily suspended on an emergent basis via an Order filed on August 1, 2002. That Order recited that the Attorney General had by formal administrative complaint sought the suspension or revocation of Dr. Ashkar's license based upon his having engaged in an inappropriate

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sexual relationship with K.S., a female patient, during the course of the physician/patient relationship, that respondent indiscriminately prescribed medication including controlled substances to the patient K.S. and G.S., her spouse, failing to document the majority of the prescriptions in K.S.'s patient record and without maintaining any medical record for K.S. and that respondent fraudulently issued prescriptions in the name of K.S. for controlled substances for his own use and the use of his wife. The Order further recited allegations including respondent's performance of experimental silicone breast implant surgery on K.S. without having required consent forms signed to enroll the patient in an experimental study for which respondent was an approved investigator, his suspension from that study, and his failure to note consultations, examinations, and prescriptions in the patient's chart. The Order additionally stated that respondent admitted that he had a sexual relationship with K.S., but denied that she was a patient at the time, and provided explanations for many of the medications he prescribed for K.S.

After a hearing before the full Board of Medical Examiners on July 10, 2002, the Board temporarily suspended respondent's license, finding as reflected in its Order that respondent exhibited a pattern of such flawed medical and ethical judgment that there was a palpable demonstration of a clear and imminent danger to the public so that his continued practice could

not be permitted. Specifically, the Board made findings that respondent had a sexual relationship with K.S., a vulnerable patient with whom there was no question he had a continuing physician/patient relationship, as he owed the patient a duty of follow-up on a long term basis due to his status as an investigator and the experimental protocol regarding surgery he performed on K.S. and due to the continuing and repeated medical care and prescriptions he provided to the patient. The Board further found that respondent failed to follow the protocol for an investigational study despite his status as an investigator, had the responsibility to obtain proper informed consent for silicone implants, yet no consent form was signed and respondent failed to enroll patient K.S. in the study. The Board additionally made findings that there were questionable indications for the silicone implants in this patient, that respondent's prescribing of controlled substances was often without documented medical need, not only as to patient K.S., but as to her husband G.S., and that respondent improperly prescribed medication for G.S.'s mother by writing a prescription in the name of G.S. Finally the Board made findings that respondent's medical records were incomplete and inadequate, not even including the complications of surgery he performed for which he subsequently treated patient K.S.

The Board's Order of Temporary Suspension concluded that respondent's pattern of practice evidenced such flawed judgment

that no other measure the Board might institute such as requiring a chaperon or limiting his practice could adequately protect the public. The Board noted that the doctor remained uninformed of his responsibilities and duties as a physician even as of the time of the Temporary Suspension hearing in the Summer of 2002.

Dr. Ashkar's first application for reinstatement appeared to be based upon his enrollment in the Physician's Wealth Program (hereinafter PHP) and submission to an evaluation for psychosexual disorders, alcohol and drug use and psychiatric evaluation. Dr. Baxter reported that according to psychologist Barry Zakireh at the Peters Institute, Dr. Ashkar did not meet criteria for psychosexual disorders and suggested that respondent be permitted to practice with the use of a chaperone whenever he examines a female patient, and that individual therapy might be of benefit to address other issues identified. Finally Dr. Baxter concluded that respondent may have been "duped" as respondent suggested, but also he indicated respondent showed "poor judgment."

Subsequently as part of the first reinstatement application, an undated report of the Peters Institute authored by Barry Zakireh, Ph.D. and an amendment to Dr. Zakireh's report: was faxed to the Board office. Dr. Zakireh's report indicated that it was based only on the sources of information presented to the Peters Institute, that is, respondent's self-report of the history,

interviews of collateral sources such as Dr. Baxter, and a few other close colleagues and individuals who know respondent. Significant sources of information were omitted from the materials first provided to the Peters Institute, including any information from the Board. For example, at the time the first application for reinstatement was made, the Board's Order of Temporary Suspension in this matter was apparently not provided to the evaluator.

The Board found at the time of the first application that the Peters Institute report indicated that Dr. Zakireh was given a version of the facts that understated both the doctor's relationship to patient K.S. and her family, and the nature and extent of the physician/patient relationship. (First Order of Penial of Reinstatement filed June 16, 2003 attached and made a part hereto.)

The Board fully considered respondent's first application and determined to deny reinstatement at that time. The determination was granted in part on the Board's finding that the materials the expert reviewed were inadequate to address the pattern of practice of respondent which the Board previously found evidenced flawed ethical and medical judgment. The Board then found that given the overall pattern of poor judgment as found by the Board in connection with the application for temporary suspension, use of a chaperon, engagement in therapy and respondent's declaration that he would prescribe appropriately if allowed to practice would not cure the Board's concerns. Additionally, a report that respondent

appears not to suffer from any psychosexual disorder, did not ameliorate or even attempt to address the findings of poor judgment previously made by the Board. We found then that apparently respondent did not recognize that K.S. was clearly a patient at the time of his improprieties, that he continued to perform surgical procedures on her after beginning a sexual relationship, and would continue to be so for many years to come given the experimental nature of the surgery he performed on her and his status as an investigator. It was apparent from a reading of respondent's version of the details in the Peters Institute report that he remained uninformed of his responsibilities and duties as a physician at the time of his first application.

On September 20, 2003 at a regularly scheduled Board meeting the Board considered respondent's second Application for Reinstatement of License on the papers and the State's September 3, 2003 response. At this juncture respondent for the second time argues that reinstatement is appropriate because now the Peters Institute has rendered an opinion in support of reinstatement based on the background information the Board previously noted was missing. Specifically an August 4, 2003 Addendum to Evaluation {"Addendum"}) authored by Dr. Zakireh recites that he was provided the following by counsel for respondent: (1) Administrative Order of the Medical Board of Examiners June 11, 2003; (2) Administrative Order of Temporary Suspension of License August 1, 2002 and (3)

transcripts of Deposition testimony of Dr. Ashkar July 10, 2002. The addendum recites that the above materials were reviewed to supplement and assess the issues raised in the original psychological evaluation.

The evaluator in his Addendum opines once again that respondent has a positive prognosis and emphasizes that his conduct involved one patient in over thirty years of practice which represents an anomaly. He concludes that if respondent were to be reinstated while following the PHP's recommendations, his practice would not constitute a threat to the public. He also states that the additional background information which was provided to him merely confirmed assumptions he had taken into account (such as respondent's under reporting events) when performing his evaluation and drafting his original report. Additionally, he opines that respondent has a positive prognosis for treatment. Finally, he finds that: "given respondent's sexual involvement with his patient, it is reasonable to assume that the multiple violations were directly related, influenced by and within the context of Dr. Ashkar's investment in the sexual relationship to K.S."

We reject this logic. The temporary suspension was based on the collective synergistic combination of all of the facts of this case which demonstrates respondent's significantly flawed judgment on fundamental ethical and medical issues. Furthermore, his continued lack of acknowledgment as to his serious flaws in judgment

which occurred on multiple occasions and involved many issues impresses on us that he cannot now be trusted to practice.

The Board's original finding of clear and imminent danger and rejection of this most recent application is not predicated solely on a psychosexual diagnosis. It is based on conduct which runs the gamut of professional services that physicians perform. For instance, respondent had an inappropriate sexual relationship with a vulnerable female patient during the course of a doctor/patient relationship and continues to refuse to acknowledge the inappropriateness of that conduct because he does not recognize that a doctor/patient relationship continued to exist. During the course of that relationship, he inappropriately prescribed CDS to her and her spouse and did not document much of his prescribing. Furthermore, he fraudulently issued prescriptions. Additionally, he performed experimental silicone breast implant surgery on a patient with whom he was having a sexual relationship without acquiring her informed consent or including her data in the experimental study for which he was an investigator.

We find that respondent's conduct and his non recognition of his far ranging deficiencies involving ethical, prescribing, recordkeeping, and medical, lapses in judgment go far beyond issues limited solely to a psychosexual disorder and treatment. We again find that we would be abrogating our responsibility to protect the public's safety if we were to allow respondent to practice with

conditions. We do not find that a chaperon or any other measures are adequately protective of the public in this case in which much of respondent's conduct took place outside of his office setting.

The Board has fully considered the documents submitted and denies reinstatement or removal of the temporary suspension at this time for reasons expressed in the attached prior Order of Denial of Reinstatement and detailed herein.

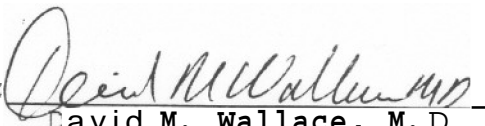
ACCORDINGLY, IT IS ON THIS *19th* DAY OF *Sept.*, 2003,

ORDERED :

1. Respondent's application for reinstatement of his license is hereby denied.

STATE BOARD OF MEDICAL EXAMINERS

By:


David M. Wallace, M.D.,
President

FILED

June 16, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF **THE** SUSPENSION : Administrative Action
OR REVOCATION OF THE LICENSE

MICHAEL ASHKAR, M.D.

ORDER

:
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was **opened** to the State Board of **Medical** Examiners upon **the** filing by Dr. Ashkar of an application for the reinstatement of his **license** to practice medicine and surgery in the State of **New Jersey**. His license **was temporarily suspended** via an **Order** filed on **August 1, 2002**. The Order recited that the Attorney General had by formal administrative complaint sought **the** suspension **or** revocation of Dr. Ashkar's **license** based upon his having engaged in an inappropriate **sexual** relationship with a female patient **during** the course of the physician/patient relationship, that respondent indiscriminately **prescribed** medication including **controlled** substances to the patient and her **spouse**, failing to **document** the majority of the prescriptions in the patient's record **and** without maintaining any medical record for the patient's spouse, and that respondent fraudulently issued prescriptions in the name of the **patient** for controlled substances for his **own** use and the use of his wife. The Order further recited **allegations** including **respondent's performance** of **experimental** silicone breast **implant** surgery on **the** patient without having

required consent forms **signed** to **enroll** the **patient** in an experimental study for which respondent was an **approved** investigator, his **suspension** from **that** study, and his **failure** to **note** consultations, examinations, and prescriptions in the patient's **chart**. The Order further recited that respondent admitted **that** he had a sexual relationship with patient K.S., but denied that she was a patient at the time, and provided explanations for many of the medications he prescribed for K.S.

After a hearing before the full Board of Medical **Examiners** on July 10, 2002, the Board temporarily **suspended** respondent's license, finding as reflected in its Order that respondent **exhibited** a pattern of such flawed **medical** and ethical judgment that there was a **palpable** demonstration of a clear and imminent danger to the **public** so that his continued practice **could not be** permitted. Specifically, the Board made findings that respondent had a sexual relationship with a vulnerable patient with whom there was no question he had a continuing physician/patient relationship, as he **owed** a duty of follow-up **on a long term basis** due to his status as an investigator and the **experimental** protocol regarding surgery he **performed on the patient**, and **due** to the continuing and **repeated medical** care and prescriptions he provided to the patient. The Board further found that respondent failed to follow the protocol for an investigational study **despite his** status as an investigator, had the responsibility to obtain **proper** informed

consent for **silicone implants** yet no **consent** form was signed and **respondent** failed to **enroll** the patient in the study. The Board additionally made findings that **there were questionable** indications for the **silicone implants in this** patient, that respondent's prescribing of **controlled substances** was **often** without documented medical **need not only as** to patient K.S., but **as to her** husband G.S., and that respondent improperly **prescribed** medication for G.S.'s mother by **writing** a prescription in the name of her son. Finally the **Board** made findings that **respondent's** medical records **were incomplete and inadequate,** not even including the complications of surgery **he performed** for which he subsequently treated **the** patient.

The Board's Order of **Temporary Suspension** concluded that respondent's pattern of practice evidenced flawed judgment **which** was irremediable **by** any measure **the Board might** institute **such** that **nothing** short of a temporary suspension **could adequately** protect the public. The Board noted **that the** doctor **remained** uninformed of his responsibilities and **duties** as a physician **even as of** the time of **the Temporary Suspension** hearing in the **Summer** of 2002.

Dr. Ashkar's application for reinstatement appears to be based upon his enrollment in **the** Physician's Health Program (hereinafter PHP) and **submission** to an evaluation for psychosexual disorders, alcohol and **drug** use and psychiatric evaluation. A two page **letter** of Dr. Louis **E. Baxter, Sr., M.D.,** Executive Medical Director of the

Barry Zakireh, Ph.D. was faxed to the Board via letter of Mr. Kern. At 4:22 p.m. on that same date an amendment to Dr. Zakireh's report was faxed to the Board office. Dr. Zakireh's report indicates that it is based only on the sources of information presented to the Peters Institute, that is, respondent's self-report of the history, interviews of collateral sources such as Dr. Baxter, and a few other close colleagues and individuals who know the respondent. Significant sources of information were omitted - including any request for information from the Board. For example, the Board's prior Order in this matter was apparently not provided to the evaluator.

A review of the Peters' report indicates that Dr. Zakireh was given a version of the facts that understated both the doctor's relationship to patient K.S. and her family, and the nature and extent of the physician/patient relationship. (For example, respondent described the family contacts as "superficial," however previous information indicated the families went on vacation together and in fact had frequent social contact, respondent having explained his prescribing of controlled substances to patient G.S.'s husband as he was his "golfing buddy." Striking in its omission also is information regarding the experimental nature of the silicone breast procedure that respondent performed on the patient, the fact that there was a continuing obligation to the patient for

years to come, that no informed consent documents were signed nor did he enroll the patient in the required study, and all of the facts regarding controlled dangerous substances that were prescribed to the husband and mother-in-law of the patient),

In discussing his clinical impressions and summary of findings, Dr. Zakireh mentions that respondent "reported that he 'assumed' that he had terminated the doctor-patient relationship, but acknowledged that he had not formally completed the proper procedures towards this end." In discussing his further reasoning prior to making recommendations regarding respondent, Dr. Zakireh indicates that respondent

...manifests a significant tendency to deny, minimize, or underreport difficulties or shortcomings. Though he acknowledged the sexual relationship with a patient, he was inconsistent in viewing it as problematic. Dr. Ashkar appeared to employ multiple justifications or excuses for his actions, and tended to blame others or situations for his problems. He blamed the complainant for initiating the sexual contact... He denied that he poses any risk to his patients and declined any need for treatment or counseling to ensure prevention. Most importantly, he did not express empathy, remorse, or guilt concerning the effects of his behavior toward the complainant.

Dr. Zakireh discusses several protective and risk factors in this case regarding the likelihood of respondent again engaging in sexually inappropriate behavior with a patient, observing that they are "deduced" from available information and expressing caution about the lack of "collateral information beyond self-reports" or

any psychosexual disorder, does not ameliorate or even attempt to address the findings of poor judgment previously made by the Board,

We find Limited value in the Peters Institute report as the ~~examiner~~ apparently did not have access to the Board Order or the full facts of this matter. Dr. Zakireh's report states specifically "there is no indication that he is unfit to practice medicine ~~based on the details and circumstances of the recent violation.~~" Yet the details or circumstances considered by Dr. Sakireh were solely as reported by Dr. Ashkar. We are particularly concerned for example that after undergoing the temporary suspension proceeding and receiving the Board's findings as contained in its Order of August 1, 2002, respondent reportedly continued to view his problem with patient K.S. as not having "adequately terminated his professional relationship" with the patient or as he reported to Dr. Zakireh that he "'assumed' he had terminated the doctor-patient relationship, but acknowledged, he had not formally completed the proper procedures toward this end." Apparently respondent still does not recognize that K.S. was clearly a patient at the time of his improprieties, that he continued to perform surgical procedures on her after beginning a sexual relationship, and would continue to be so for many years to come given the experimental nature of the surgery he performed on her and his status as an investigator. It is apparent from a reading of respondent's version of the details in the Peters